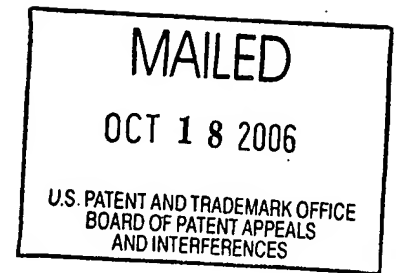


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte: DAVID GAXIOLA, JOSEPH DARA-ABRAMS, RAVI GAUBA,
JUN OUYANG AND KLAUS HOFRICHTER

Application No. 10/033,407

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on September 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated December 29, 2006, in response to the Final Rejection mailed June 23, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

* * *

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

The “Summary of claimed subject matter” appearing on page 2 of the Appeal Brief filed December 29, 2006, is deficient because it does not separately map independent claims 1 and 10 to the specification.

(vii) ***Argument.*** The appellant’s contentions with respect to each **>ground of rejection<** presented ****** and the basis for those contentions, including citations of authorities, statutes, and parts of the record relied on, should be presented in this section. **>**A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim.**<**

The “Arguments” section of the brief does not include claim 14 in the grounds of rejection statement (Ground I, pg 4). However, claim 14 is listed as an appealed in the “Status of Claims” and “Grounds or Rejections to be Reviewed on Appeal” sections of the brief. Clarification is required.

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Reply Brief

Appellant filed a Reply Brief May 23, 2007 in response to the Examiner's Answer mailed March 20, 2007. On June 13, 2007 the examiner acknowledged the Reply Brief and included a supporting statement as to claims 1 and 10, this is improper. The examiner should vacate the acknowledgment of Reply Brief mailed on June 13, 2007 and re-issue a corrected acknowledgement as per 37 CFR § 41.43.

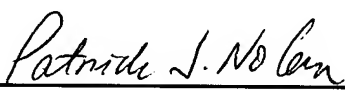
CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed December 29, 2006, defective;
- 2) notify the appellant to submit a "paper" which corrects the Appeal Brief, Summary of Claimed Subject Matter and Argument Section under 37 CFR § 41.37(c)(1)(v) and (vii);
- 3) acknowledgement and consideration of any "paper" that may be submitted by Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 § 41.37(c)(1)(v) and (vii);
- 4) vacate the acknowledgment of Reply Brief mailed June 13, 2007, and reissue a corrected acknowledgement as required by 37 CFR § 41.43; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
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PJN/tsj

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